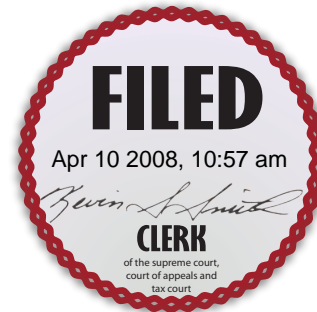


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

GARY L. GRINER
Mishawaka, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JERRY GRIFFIN, III,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 71A03-0708-CR-401

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland Chamblee, Jr., Judge
Cause No. 71D02-0502-FD-193

April 10, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Jerry Griffin, III (Griffin), appeals his conviction for Count I, driving while suspended, a Class A misdemeanor, Ind. Code § 9-24-19-3 and Count III, possession of marijuana with a prior conviction of possession of marijuana, as a Class D felony, I.C. § 35-48-4-11.

We affirm.

ISSUE

Griffin raises one issue on appeal, which we restate as: Whether the trial court abused its discretion by denying Griffin's motion to continue the jury trial after he requested to be represented by counsel of his choice.

FACTS AND PROCEDURAL HISTORY

On February 23, 2005, two South Bend Police Officers, patrolling in the same marked cruiser, observed a red Chevrolet with a plate number that was "false and fic." (Transcript pp. 88, 102). The Officers attempted to stop the vehicle, but the driver, later identified as Griffin, did not stop immediately. Following the vehicle, the Officers noticed Griffin reaching toward the passenger side. Once Griffin stopped the car and rolled down the window, the Officers noticed a strong odor of burnt marijuana. The Officers asked Griffin, the sole occupant of the car, to exit the vehicle. They patted him down and secured him in their police car.

During the search of Griffin's vehicle, the Officers found several seeds and a smoked "blunt," which was still moist on the passenger floor board. (Tr. p. 91). The blunt tested

positive for marijuana. Dispatch also informed the Officers that Griffin's license had been suspended. Griffin was arrested and transported to jail. On route to jail, the Officers noticed Griffin making some strange movements, such as "slouching down or scrunching down in the seat." (Tr. p. 106). Upon arrival at the jail, the Officers flipped up the seat of the cruiser and found a silver smoking pipe.

On February 25, 2005, the State filed an Information charging Griffin with Count I, driving while suspended, a Class A misdemeanor, I.C. § 9-24-19-3; Count II, possession of paraphernalia, a Class A infraction, I.C. § 35-48-4-8.3; and Count III, possession of marijuana with a prior conviction of possession of marijuana, as a Class D felony, I.C. § 35-48-4-11. Griffin's jury trial was scheduled for June 28, 2007. On the morning of trial, Griffin informed the trial court that he did not wish to proceed to trial with his assigned counsel. He explained that his counsel refused to file a motion to suppress evidence and did not see the benefit in having the evidence fingerprinted and subjected to DNA testing. Griffin clarified that he had retained an attorney in another case and insinuated that new counsel might handle the current case. As the jury pool had already been called, the trial court denied Griffin's motion for continuance. At the close of the evidence, the jury found Griffin guilty of Count I, driving while suspended and Count III, possession of marijuana with a prior conviction of possession of marijuana. On July 20, 2007, the trial court sentenced Griffin to two concurrent terms of twelve months in the Department of Correction.

Griffin now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Griffin contends that the trial court abused its discretion by denying his motion for continuance. Specifically, he asserts that he was prejudiced as he was forced to go to trial without counsel of his choice. The Sixth Amendment guarantees a criminal defendant's right "to have the assistance of counsel for his defense." A corollary of this right is the right to choose counsel when a defendant is financially able to do so. *Lewis v. State*, 730 N.E.2d 686, 689 (Ind. 2000). However, the right to counsel of choice is not absolute. *Id.* It is well settled that the right to counsel of choice must be exercised "at the appropriate stage of the proceeding." *Id.* (quoting *Parr v. State*, 504 N.E.2d 1014, 1016 (Ind. 1987)). As our supreme court observed in *Perry v. State*, 638 N.E.2d 1236, 1241 (Ind. 1994), "[c]ontinuances sought shortly before trial to hire a new attorney are disfavored because they cause substantial loss of time for jurors, lawyers, and the court."

A "trial court, in the exercise of its discretion, may refuse to allow an accused to replace counsel during or immediately before trial because such a substitution would require the court to grant a continuance." *Lewis*, 730 N.E.2d at 690. We review the denial of a continuance for an abuse of discretion and the denial of the right to counsel of choice is reviewed to determine whether the trial court acted unreasonably and arbitrarily, *Id.* Evaluated under either standard, Griffin is not entitled to a new trial.

Here, Griffin's case had been on the trial court's docket in excess of two years: he was charged on February 25, 2005, trial counsel entered an appearance on March 17, 2005, and the trial was held on June 28, 2007. Thus, Griffin had more than two years to decide

whether he was satisfied with defense counsel's representation. Despite all this available time, he declared his dissatisfaction on the morning of trial.

Furthermore, prior to denying his motion for continuance, the trial court questioned Griffin regarding his reasons for a continuance and found them to be without merit. The trial court carefully listened to Griffin's complaints, clarified the applicable law to him, and explained the basis on which the court considered them to be "warrantless." (Tr. p. 7). Additionally, the trial court observed that the jury pool had been called and prospective jurors were on their way to the courtroom. As we stated in *Lewis*, granting the continuance could have resulted in a vacant courtroom, "and the time of dozens of prospective jurors summoned for the trial would have been wasted." *Id.* at 690. In light of the evidence before us, we find no error.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion by denying Griffin's motion to continue and did not act unreasonably or arbitrarily by denying Griffin's request for counsel of his choice.

Affirmed.

KIRSCH, J., and MAY, J., concur.